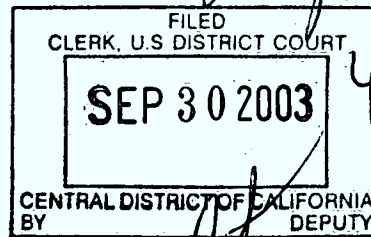


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Attorney for Petitioner
Manuel Mendoza



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MANUEL MENDOZA,

Petitioner,

v.

JEANNE WOODFORD, Warden of
California State Prison at San
Quentin,

Respondent.

) Case No.: CV 03-06194 SJO
)

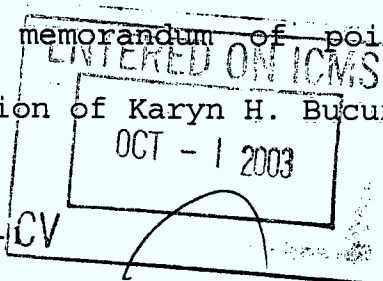
) DEATH PENALTY CASE
)

) EX PARTE APPLICATION BY KARYN
) H. BUCUR, ESQ. FOR APPOINTMENT
) OF SECOND COUNSEL; MEMORANDUM
) OF POINTS AND AUTHORITIES;
) DECLARATION OF KARYN H. BUCUR,
) ESQ.; PROPOSED ORDER FILED
) SEPARATELY
)
)
)

COMES NOW the petitioner Manuel Mendoza through his
appointed counsel Karyn H. Bucur, Esq., and respectfully moves
this Court pursuant to Local Rules 83-17.1 and 83-17.4 for the
appointment of Tina Long Rippy, Esq. as second counsel for
petitioner.

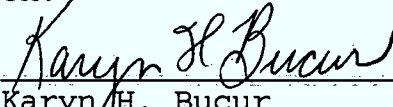
This ex parte application is based on the records and
files of this case, the attached memorandum of points and
authorities and the attached declaration of Karyn H. Bucur, Esq.

Ex Parte Application - CV



1 On September 29, 2003, counsel spoke to Mr. Paul
2 Roadarmel, deputy attorney general, and he informed her that he
3 objects to second counsel being appointed on this case.
4 According to the state court dockets and the California Supreme
5 Court opinion, Mr. Roadarmel represented the People in both the
6 direct appeal and the habeas petition.
7

8 Dated: September 29, 2003


Karyn H. Bucur
Counsel for Mr. Mendoza

11
12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13
14 **1. Procedural Status**

15 Petitioner was tried and convicted in the Los Angeles
16 Superior Court of residential robbery, robbery, kidnapping for
17 purposes of robbery, commercial burglary, forcible rape, arson
18 with great bodily injury, and murder charges involving four
19 separate incidents. The offenses took place in February 1986.
20 The petitioner was sentenced to death. The conviction was
21 affirmed in August 2000. The United States Supreme Court denied
22 the petition for writ of certiorari on May 21, 2001.
23
24

25 On November 5, 1997, the petitioner filed a petition
26 for a writ of habeas corpus in the state court. This petition
27 was denied on August 13, 2003.
28

1 On August 29, 2003, petitioner filed a request for
2 appointment of counsel and for stay of execution of death
3 sentence in the United States District Court for the Central
4 District of California. On September 9, 2003, the undersigned
5 counsel was appointed to represent petitioner in the district
6 court.
7

8 **2. Request for Appointment of Second Counsel**

9 Title 21 United States Code section 848(q)(7)
10 provides, in relevant part, that the "court, for good cause, may
11 appoint another attorney whose background, knowledge, or
12 experience would otherwise enable him or her to properly
13 represent the defendant, with due consideration to the
14 seriousness of the possible death penalty and to the unique and
15 complex nature of the litigation." Counsel is requesting that
16 this Court appoint Tina Long Rippy, Esq. as second counsel in
17 this proceeding.
18
19

20 Counsel is a sole practitioner. Counsel estimates
21 that pursuant to Title 28 United States Code section 2244(d)(1),
22 the statute of limitations for the filing of a petition for a
23 writ of habeas corpus in federal court will expire in
24 approximately twelve months, barring any tolling of the statute.
25 [Please note: Counsel intends on filing in the near future a
26 Motion for Order Establish Commencement of Statute of
27 Limitations for Filing Petition For Writ of Habeas Corpus.]
28

1 Counsel is in the process of collecting the record and
2 files from petitioner's prior counsel, the State Public
3 Defender. Counsel has already received the 5700 pages of
4 Reporter's and Clerk's Transcript and the Petition for Writ of
5 Habeas Corpus (519 pages) and the 9 volumes of appendices in
6 support of the petition. Counsel has been informed that there
7 are still several boxes of record and related material to be
8 forwarded to her.
9

10
11 Based on a cursory review of available information,
12 counsel has learned that there are over thirty (30) issues and
13 subissues related to the direct appeal. The published opinion
14 reveals that petitioner did not present any evidence at the
15 guilt phase of his trial and presented very limited evidence at
16 his penalty phase. People v. Mendoza, 24 Cal. 4th 130, 153, 154,
17 99 Cal. Rptr. 2d 485 (2000). Because of the lack of evidence
18 presented at both phases of petitioner's trial, his state
19 attorneys were required to conduct an extensive amount of
20 investigation which resulted in the 519 page petition for a writ
21 of habeas corpus. The petition contains approximately 29 issues
22 and 100 subissues. Despite this huge effort by petitioner's
23 attorneys in the state court, counsel has been informed by
24 petitioner's prior attorneys that further investigation
25 concerning petitioner's guilt phase and penalty phase may be
26
27
28

1 necessary. Therefore, counsel will be required to investigate
2 and litigate these issues.

3 Given the limited amount of time available to counsel
4 and her own limited resources, counsel respectfully submits good
5 cause exists in this case for appointment of second counsel.
6

7
8 **3. Appointment of Tina Long Rippy, Esq.**

9 The Local Rules provide that second counsel may be
10 appointed "if the assigned judge...determines that second
11 counsel is necessary." Local Rule 83-17.4(b)(ii). Under the
12 Local Rules, the normal method of appointing second counsel
13 would be to refer the matter to the Death Penalty Committee for
14 appointment of second counsel from a panel of qualified
15 attorneys. However, the Court is not required to follow this
16 procedure and may make its own direct appointment. Local Rule
17 83-17.1, discussing the applicability of the special
18 requirements for habeas corpus petitions involving the death
19 penalty, provides that "the application of this rule may be
20 modified by the judge to whom the case is assigned."
21

22 Counsel is requesting the Court directly appoint Tina
23 Long Rippy, Esq. as second counsel, rather than refer the matter
24 back to the Death Penalty Committee, for the following reasons:
25

26 a. Tina Long Rippy is "qualified" second counsel
27 within the meaning of Title 21 United States Code section
28

1 848(q)(6) ("admitted to practice in the court of appeals for not
2 less than five years, and must have had not less than three
3 years' experience in the handling of appeals in the court in
4 felony cases".) Ms. Rippy has been an attorney for eleven years
5 and has served on the Ninth Circuit Indigent Appellate Panel in
6 the Central District of California since 1995.

8 b. As set forth in the attached declaration, Ms.
9 Rippy has indicated a willingness to accept this appointment.
10 Counsel has known Ms. Rippy for fifteen years. Over the years
11 counsel and Ms. Rippy have worked together and continually
12 consult with each other and have developed a close relationship
13 of respect and trust of one another.

15 c. As mentioned above, there are well over 100 legal
16 issues to evaluate and possible new issues. If Ms. Rippy is
17 appointed on this case, counsel plans on dividing the
18 responsibilities so that the efforts are not duplicated.

20 d. During the preliminary discussions concerning
21 appointment in this case with Randall J. Schnack, CJA
22 Supervising Attorney, Central District of California, counsel
23 was informed that the Court has discretion to appoint someone
24 outside the panel as second counsel. This fact weighed strongly
25 in counsel's decision to accept this appointment due to 100 plus
26 legal issues to evaluate in this case.

1 e. Due to the anticipated legal work stated above,
2 and the short time period to prepare the petition under the
3 statute, counsel believes she cannot effectively represent
4 petitioner without co-counsel.
5

6 f. Furthermore, there were always two attorneys
7 assigned to the case while the case was in the State Public
8 Defender's office.

9 g. In addition, counsel requests that Ms. Rippy be
10 appointed as "co-counsel" and be compensated at the same rate as
11 counsel. Counsel and Ms. Rippy share a common background in
12 terms of their qualifications to represent the petitioner.
13 Counsel intend on sharing the work equally. Counsel plan on
14 beginning the investigation and preparation of the petition by
15 reading and digesting the trial transcript, identifying claims,
16 speaking with the client and former counsel, and then divide the
17 responsibility for specific claims.
18
19


20 h. Accordingly, it is counsel's request that they be
21 compensated at the same hourly rate.
22

23 24 4. Conclusion

25 Based on this Court's authority under Title 21 United
26 States Code section 848(q)(7) and Local Rule 83-17 et seq., and
27 the good cause set forth herein and in the attached declaration,
28

counsel respectfully requests that the Court appoint Tina L. Rippy, Esq. as co-counsel in this case at the rate of \$125.00.

Dated: September 29, 2003


Karyn H. Bucur
Counsel for Mr. Mendoza

Declaration of Karyn H. Bucur

1. I am an attorney at law. On or about September 3, 2003, I spoke telephonically with Randall J. Schnack, CJA Supervising Attorney, Central District of California. Mr. Schnack advised me that I had been selected to represent Manuel Mendoza in the matter pending before the Court.

2. I immediately contacted Gary Garcia, deputy state public defender, Mr. Mendoza's prior counsel, to learn more about the nature of the case and the length of the record. Mr. Garcia faxed to me the table of contents of Mr. Mendoza's petition for a writ of habeas corpus filed in the state supreme court. The table of contents reveals that the 519 page petition contains approximately 29 issues and 100 subissues.

3. I also read the published opinion from Mr. Mendoza's direct appeal and learned that he did present any evidence for his defense in the guilt phase and limited evidence in the penalty phase. I knew this meant that extensive investigation may be necessary in order to be effective in this

1 case. The published opinion also revealed there are
2 approximately 30 issues and subissues to explore.

3 4. A couple days later I spoke with Mr. Schnack
4 again and advised him that I would accept the appointment. My
5 decision to accept the case was strongly based on the fact that
6 the Court has discretion to appoint second counsel in death
7 penalty capital cases.

8 9 5. I have known Ms. Rippy for approximately 15
10 years. She was admitted to the California State Bar in 1992 and
11 has served on the Ninth Circuit Indigent Appellate Panel in the
12 Central District of California since 1995. We have worked
13 together on cases and continually consult with each other. We
14 have relationship based on mutual respect and trust.

15 16 6. On September 19, 2003, I met with Ms. Rippy for a
17 couple of hours and we discussed how we would handle this case
18 if Ms. Rippy is appointed. It is our intent, if Ms. Rippy is
19 appointed, to each review the trial transcript and clerk's
20 transcript. We will then identify claims and divide up the work
21 so that our efforts do not overlap.

22 23 7. Ms. Rippy has informed me that she is willing to
24 accept appointment as co-counsel in this case.

25 26 8. On September 26, 2003, I spoke with Sara Pheiss,
27 Esq. and Gary Garcia, Esq., Mr. Mendoza's prior attorneys, and
28 they both informed me that further investigation may be

1 necessary regarding issues relating to both the guilt and
2 penalty phase.

3 9. The reporter's transcript and the clerk's
4 transcript consist of 5700 pages. I was informed by Gary
5 Garcia, deputy state public defender that there are still
6 several boxes of record and related material to be forwarded to
7 me.
8

9 10. Based on my preliminary evaluation, I believe
10 that the statute of limitations may expire in approximately 12
11 months in this case barring any tolling of the statute. Due to
12 the 100 plus legal issues and investigation of possible new
13 issues in the guilt and penalty phase, I believe it is necessary
14 to appoint second counsel to equally share the responsibility to
15 file the petition for a writ of habeas corpus.
16
17

18 11. On September 29, 2003, I spoke with Paul
19 Roadarmel, and I informed him of the nature of this ex parte
20 application. Mr. Roadarmel informed me objects to second
21 counsel being appointed on this case.
22

23 I declare under penalty of perjury under the laws of
24 the United States that the foregoing is true and correct to the
25 best of my knowledge.

26 Dated: September 29, 2003

27 
28 Karyn H. Bucur

CERTIFICATE OF SERVICE

I, the undersigned declare: that I am a citizen of the United States and a resident of Orange County and employed in Laguna Hills, California; that my business address is 24881 Alicia Parkway, El93, Laguna Hills, California 92653; that I am over the age of 18 years; that I am not a party to the above-entitled action; that I placed in a U.S. Post Box in the City of Laguna Hills, on, a copy of EX PARTE APPLICATION FOR APPOINTMENT OF SECOND COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES;, DECLARATION OF Karyn H. Bucur, AND PROPOSED ORDER addressed to:

SEE ATTACHED LIST

This Certificate is executed on the date shown below, at Laguna Hills, California.


Karyn H. Bucur

Dated: September 29, 2003

1 CV 03-6194 SJO: Manuel
2 Mendoza v. Jeanne Woodford
3 Service List re: Order
4 Appointing Counsel

5 Maria E. Stratton
6 Federal Public Defender
7 321 East Second Street
8 Los Angeles, CA 90012

9 Manuel Mendoza
10 CDC #E-06400
11 San Quentin, CA 94974

12 Paul Roadarmel
13 Deputy Attorney General
14 300 South Spring Street, #5018
15 Los Angeles, CA 90013

16 Michael G. Millman
17 California Appellate Project
18 One Ecker Place, Suite 400
19 San Francisco, CA 94105

20 Lauren Weis, Deputy Attorney
21 County of LA, Appellate
22 Division
23 210 West Temple, 18th Floor
24 Los Angeles, CA 90012

25 Clerk of Court
26 Los Angeles Superior Court
27 111 North Hill Street, Room
28 105E
Los Angeles, CA 90012

Jeanne Woodford, Warden
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